

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARTHA FEDORIW  
4134 Cambridge Court  
Schnecksville, PA 18078

Case No.: 07 CIV 7446

Plaintiff,

**ANSWER**

vs.

NEW YORK CONVENTION CENTER  
OPERATING CORPORATION  
655 West 34<sup>th</sup> Street  
New York, NY 10001  
and  
CARL ZEISS VISION, INC.  
13017 North Kingston Avenue  
Chester, VA 23836,

Defendants.  
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Defendant CARL ZEISS VISION, INC., by its attorneys **Biedermann, Reif, Hoenig, & Ruff, P.C.**, as and for its Answer to the Complaint, alleges as follows:

1. Denies each and every allegation contained in paragraph "1" of the Complaint.
2. Denies knowledge or information sufficient to form a belief as to the truth of the allegation in paragraphs "2" and "3" of the Complaint.
3. Denies each and every allegation contained in paragraph "4" of the Complaint and further responding, alleges that Carl Zeiss Vision, Inc., was and is a Delaware Corporation with a principal place of business in San Diego, California.
4. Admits the allegation set forth in paragraphs "5" and "6" of the Complaint.
5. Denies knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph "7" of the Complaint.
6. Denies each and every allegation contained in paragraph "8" of the Complaint.

**COUNT 1**

7. In response to paragraph "9" of the plaintiffs' Complaint, Answering Defendant

repeat, reiterate and reallege each and every response set forth in paragraphs "1" through "6" of this Answer with the same force and effect as if set forth fully at length herein.

8. Denies each and every allegation contained in paragraphs "10", "11", "16", "17", "18" of the Complaint.

9. Denies each and every allegation contained in both paragraphs designated "15" of the complaint.

10. Denies each and every allegation contained in paragraphs "12", "13" and "14" of the Complaint to the extent they refer to Carl Zeiss Vision, Inc., and further answering denies knowledge or information sufficient to form a belief as to the truth of the allegations therein.

#### **FIRST AFFIRMATIVE DEFENSE**

11. If plaintiff sustained or suffered damages as alleged in the Complaint, which this answering defendant expressly denies, such damages were caused in whole or in part by plaintiff's negligence or other culpable conduct, or plaintiff's assumption of risk, and, to the extent of her culpability, plaintiff is barred from recovery or, alternatively, shall have his damages reduced in the proportion that plaintiff's culpable conduct bears to all conduct causing or contributing to said damages.

#### **SECOND AFFIRMATIVE DEFENSE**

12. If plaintiff sustained or suffered damages as alleged in the Complaint, which this answering defendant expressly denies, such damages were suffered and sustained by reason of negligence or other culpable conduct of persons or entities over whom these answering defendants exercised no control or supervision, and not by reason of any negligent or culpable conduct of this answering defendant.

#### **THIRD AFFIRMATIVE DEFENSE**

13. Plaintiff has not sustained economic or any other damages.

**FOURTH AFFIRMATIVE DEFENSE**

14. Plaintiff fails to state a cause of action upon which relief can be granted.

**FIFTH AFFIRMATIVE DEFENSE**

15. Plaintiff's recovery, if any, shall be reduced by the amount of any collateral payments received, in accordance with New York CPLR 4545.

**SIXTH AFFIRMATIVE DEFENSE**

16. Plaintiff's recovery, if any, shall be reduced and/or subject to equitable apportionment under New York CPLR Article 16.

**SEVENTH AFFIRMATIVE DEFENSE**

17. Any risks, dangers or hazards in existence at the time and place mentioned in the Complaint were open, obvious, apparent and were known to and voluntarily assumed by plaintiff.

**EIGHTH AFFIRMATIVE DEFENSE**

18. Since Carl Zeiss Vision, Inc. had no notice of the condition plaintiff alleges caused her accident, the occurrence of which Carl Zeiss Vision, Inc. expressly denies, Carl Zeiss Vision, Inc. is not liable to plaintiff and/or any other party in this matter for any share of any recovery obtained by plaintiff.

**AS AND FOR A CROSS-CLAIM AGAINST CO-DEFENDANT  
NEW YORK CONVENTION CENTER OPERATING CORPORATION**

19. In the event this answering defendant is held liable to plaintiff, which liability this answering defendant expressly denies, then any judgment or verdict against this answering defendant will be the result of the negligence, breach of warranty, breach of contract or other wrongful conduct on the part of the above-named co-defendant and, therefore, this answering defendant will be entitled to judgment over and against said co-defendant for the whole or any such verdict or judgment based upon indemnity, or for a portion of any such verdict or judgment, in accordance with the relative responsibilities of the parties, based upon contribution.

**WHEREFORE**, CARL ZEISS VISION, INC. demands judgment dismissing the Complaint, along with the costs, disbursements, and fees associated with the defense of this action, based on common law indemnity or common law contribution, along with the costs, disbursements and fees, including reasonable attorneys fees, associated with the defense of this action.

Dated: New York, New York  
November 26, 2007

Yours, etc.,

**BIEDERMANN, REIF, HOENIG & RUFF, P.C.**

By: \_\_\_\_\_

Peter H. Cooper

**Attorneys for Defendant**

CARL ZEISS VISION, INC.

570 Lexington Avenue, 16th Floor

New York, New York 10022

Tel: (212) 697-6555

TO:

Stavros E. Sitinas, Esq.

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Law Offices of Edward Garfinkel

Attorneys for Defendant

New York Convention Center Operating Corporation

110 William Street

New York, NY 10038-3901

(212) 809-8000

AFFIDAVIT OF SERVICE

STATE OF NEW YORK     )  
  )ss:  
COUNTY OF NEW YORK    )

Michelle A. Ritchie, being duly sworn deposes and says that deponent is not a party to the action, is over 18 years of age and resides in Westchester County.

On the 26th day of November, 2007 deponent served the within **ANSWER** upon: -

Stavros E. Sitinas, Esq.  
**WINGATE, RUSSOTTI & SHAPIRO, LLP**  
Attorneys for Plaintiff  
420 Lexington Avenue  
Suite 2750  
New York, NY 10170

Peter A. Greiner, Esq.  
**MEYERSON & O'NEILL**  
Attorneys for Plaintiff  
1700 Market Street  
Suite 3025  
Philadelphia, PA 19103

Law Offices of Edward Garfinkel  
Attorneys for Defendant  
New York Convention Center Operating Corporation  
110 William Street  
New York, NY 10038-3901

the address designated by said attorney by depositing same enclosed in a properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Office within the State of New York.

  
Michelle A. Ritchie

Sworn to before me this  
26<sup>th</sup> day of November, 2007

\_\_\_\_\_  
Notary Public

PETER H. COOPER  
Notary Public, State of New York  
No. 02CO5059941  
Qualified in NEW YORK County  
Commission Expires MAY 6, 2010